

**Dwyer Industries Incorporated and Shopmen's
Local Union 522 of the International Association of Bridge, Structural and Ornamental Iron
Workers, AFL-CIO. Case 9-CA-30228**

April 20, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT
AND RAUDABAUGH

Upon a charge and amended charge filed by Shopmen's Local Union 522 of the International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO (the Union) on December 11, 1992, and January 20, 1993, respectively, the General Counsel of the National Labor Relations Board issued a complaint on January 20, 1993, against Dwyer Industries Incorporated (the Respondent) alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charges and complaint, the Respondent failed to file an answer.

On March 18, 1993, the General Counsel filed a Motion for Summary Judgment and memorandum in support with the Board. On March 23, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the complaint shall be considered to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the counsel for the General Counsel, by letter dated March 1, 1993, notified the Respondent that unless an answer was received by the close of business on March 10, 1993, a Motion for Summary Judgment would be filed. The Respondent did not file an answer or make any reply to the letter.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, has been engaged in the fabrication of sheet metal products at Camp Dennison, Ohio. During the 12 months preceding issuance of the complaint, Respondent, in conducting its operations, purchased and received at its Camp Dennison, Ohio facility goods valued in excess of \$50,000 from other nonretail enterprises, including Cincinnati Steel Products Co., located within the State of Ohio, each of which other enterprises in turn had received those same goods directly from points outside the State of Ohio. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of Respondent (the unit), constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees engaged in the fabrication of iron, steel, metal and other products or in maintenance work in or about the [Respondent's] plant or plants located at Camp Dennison, Ohio and vicinity, excluding all office clerical employees, draftsmen, engineering employees, employees engaged in erection, installation or construction work, watchmen, guards and supervisors.

Since about 1980 and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and, since about 1980, the Union has been recognized as the representative by Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from July 23, 1991, to July 23, 1994.

At all times since 1980, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since about November 1, 1992, Respondent has failed and refused to bargain with the Union as the exclusive collective-bargaining representative of unit by failing to adhere to the terms of the 1991-1994 collective-bargaining agreement by deducting dues and assessments from the wages of employees pursuant to the checkoff provisions set forth in section 5(a) of the applicable collective-bargaining agreement without remitting said dues and assessments to the Union as required by that section of the contract.

CONCLUSION OF LAW

By the conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1), Section 8(d), and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing since November 1, 1992, to adhere to the terms of the 1991-1994 agreement by deducting dues and assessments from the wages of employees pursuant to the checkoff provisions set forth in section 5(a) of the agreement without remitting said dues and assessments to the Union as required, we shall order the Respondent to remit all said dues and assessments to the Union that have not been remitted since November 1, 1992, with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Dwyer Industries Incorporated, Camp Dennison, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with Shopmen's Local Union 522 of the International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, as the exclusive collective-bargaining representative in the unit described below, by failing to adhere to the terms of the 1991-1994 collective-bargaining agreement by deducting dues and assessments from the wages of employees pursuant to the checkoff provisions set forth in section 5(a) of the agreement without remitting said dues and assessments to the Union as required by that section of the contract:

All production and maintenance employees engaged in the fabrication of iron, steel, metal and other products or in maintenance work in or about the [Respondent's] plant or plants located at Camp Dennison, Ohio and vicinity, excluding all office clerical employees, draftsmen, engineering employees, employees engaged in erection, installation or construction work, watchmen, guards and supervisors.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Remit to the Union all dues and assessments which had been deducted from unit employees since November 1, 1992, as required by the 1991-1994 collective-bargaining agreement, in the manner set forth in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Camp Dennison, Ohio, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain with Shopmen's Local Union 522 of the International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO as the exclusive collective-bargaining representative in the unit described below, by failing to adhere to the terms of the 1991-1994 collective-bargaining agreement by deducting dues and assessments from the wages of employees pursuant to the checkoff provisions set forth in section 5(a) of the agreement without remitting said dues and assessments

to the Union as required by that section of the contract:

All production and maintenance employees engaged in the fabrication of iron, steel, metal and other products or in maintenance work in or about the plant or plants located at Camp Dennison, Ohio and vicinity, excluding all office clerical employees, draftsmen, engineering employees, employees engaged in erection, installation or construction work, watchmen, guards and supervisors.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL remit to the Union all dues and assessments which had been deducted from unit employees since November 1, 1992, as required by the 1991-1994 collective-bargaining agreement.

Dwyer Industries Incorporated